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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,893	03/16/2004	Charles C. Adams	330235.00009	4627

26707 7590 12/15/2006

QUARLES & BRADY LLP
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, AZ 85004-2391

EXAMINER

FLETCHER, MARLON T

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/802,893

Applicant(s)

ADAMS ET AL.

Examiner

Marlon T. Fletcher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-6, 8-19, and 21-24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Skubic (2002/0088333) in view of Pogoda (4,365,537), Capano (2004/0139841), and (Farley – non patent literature provide on IDS)..

Skubic discloses a tuning device (figure 2) for a musical instrument, comprising: a tuner having a programmable stroboscopic light source adapted for tuning a musical instrument (abstract; and figure 1); and a control button (24) on the tuner for programming a state of the stroboscopic light source.

Skubic discloses the tuning device, wherein the tuner includes a control button (24) for enabling the stroboscopic light source.

Skubic discloses the tuning device, wherein the tuner includes a display (25) for indicating a state of the stroboscopic light source.

Skubic discloses an audio mic (18) for picking up sounds.

Skubic discloses that the tuner converts audio signals to a frequency indicator (abstract).

Skubic does not disclose the tuner having a second utility.

However, Pogoda discloses a utility device (pick) integrated with a tuner, wherein the utility device has a secondary function which is independent of the tuning activity associated with the musical instrument (abstract; and figure 1).

Pogoda discloses the tuning device wherein the tuner has a tear-drop shape (figure 1). No patentable is given to the shape being a tear drop shape. Shape are not patentable subject matter. The shape further does not provide any special effect or utility that is useful.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Pogoda with the teachings of Skubic, because Pogoda enhances the tuning device of Skubic by providing another function of the tuner.

Neither Skubic nor Pogoda discloses a utility device being one of a key ring, lighter, utility tool, pin light, jewelry, cell phone, card, or watch.

However, Farley discloses a tuner having a second utility of being a key ring, **which is applicable to a use independent of a musical instrument.** Capano disclose a tuner which is a wrist band which could be considered to be jewelry.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Farley and Capano with the teachings of Skubic and Pogoda, because the teachings allow the a plurality of utilities that can be combined with the tuner.

Response to Arguments

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3. Applicant's arguments filed 09/18/2006 have been fully considered but they are not persuasive.

The applicant argues the utility of the prior art and amends the claims to provide that the second utility be one that is independent of the musical instrument. This is a negative limitation. Clearly the prior art provides a second utility. Looking at the reference to Farley, the tuner also, acts as a key chain, which clearly provides a utility independent of the musical instrument, wherein the device holds keys, much like a utility provided by the applicant. For these reasons, it is believe that the application is not allowable, wherein one of ordinary skill in the art would be able to make or provide the applicant's device based on the prior art.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-w, F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MTF
December 11, 2006



Marlon Fletcher
Primary Examiner